

The Grand Jury

José A. Fusté
Chief Judge
U.S. District Court

There have been several times when I have listened to the public discussions about the federal Grand Jury, and have been surprised at the disinformation abounding as to this institution. The truth is that the Grand Jury, as created by law, is not even close to the hidden shenanigans and inquisitorial image some have attempted to create in our community.

The Grand Jury has a long and honorable tradition dating back to 1215 and the British Magna Carta. Eventually the Grand Jury was given the power to accuse citizens for the commitment of felony crimes with total independence from the executive and the judicial branches. The Grand Jury tradition was so deeply rooted in the thirteen colonies that the federal Constitution endowed it with a Constitutional rank in the Bill of Rights. The Fifth Amendment provides that no person may be accused of a felony crime without an indictment from a Grand Jury, which is composed by residents or neighbors of the community in which the crime was committed.

Pursuant to federal laws, the Grand Jury is organized under the strict supervision of the federal court. The Grand Jury's vote does not determine the guilt or innocence of a defendant. All it does is to determine whether there is probable cause for a crime to have been committed and who were the person or persons likely to have committed that crime. If there is a finding of probable cause to indict, and if the U.S. Attorney endorses the written charges, the defendant is taken to a public trial and another jury of twelve members of the community, who weight the evidence and the defenses, then decides if the charges were proven beyond reasonable doubt. The composition of the Grand Jury is at least seventeen but no more than twenty-three members, of which twelve have to vote affirmatively in order to file any charges.

Federal law protects the Grand Jury by endowing it with the power to conduct its work in secret. There is nothing sinister or malicious about this secrecy. It is a secrecy that protects very important interests. Secrecy fosters the independence of Grand Jury members' opinions and encourages the honesty of those witnesses who testify before this body. The risk of any obstruction of justice or improper interferences by unscrupulous persons with witnesses and Grand Jury members is also minimized. But, even more important, secrecy protects and insulates those citizens who, though they may be targets of an investigation, are not charged for lack of evidence or probable cause against them. Secrecy, by law, only binds the members of the Grand Jury, interpreters, court reporters, prosecutors, and persons who receive or have access to the information by virtue of law or a judicial order. We must clarify here that the witness who testifies before a Grand Jury is not bound to secrecy. Therefore, if this witness decides to ignore those interests protected by secrecy and to spread around the four corners of the Earth what he was asked or what he answered, he may do so, even if those actions have a negative effect on the civic and judicial interests to be protected. The witness may also tell a third party

what he was asked or what he said in a concealed fashion. In that case, his identity upon disclosing details about an investigation is protected by those who receive the information. This is how most of the well-known leaks that are spread or published take place. The information leak can happen in a thousand different ways and sometimes may have no first and last name other than “entirely reliable sources close to the investigation”.

What I can assure you is that federal judges are very much aware of this situation and if a member of the Grand Jury, interpreter, court reporter, federal prosecutor, attorney, law enforcement agent, or person with legal access to the information violates the obligation to secrecy or canons of professional ethics, that person will be held legally accountable for his or her indiscretions. We try to protect the letter of the law and the honest and responsible legal purpose of a Grand Jury’s function.

A person summoned to testify before the Grand Jury must come in alone. If he or she chooses to have a legal representative, that lawyer may not go into the Grand Jury room. If it becomes necessary to consult with the attorney, the witness is allowed to leave the session and meet in private with his or her legal counsel. Furthermore, a witness subpoenaed by the Grand Jury may invoke the privilege against self-incrimination protected by the Fifth Amendment to the U.S. Constitution. When this happens, the court then decides if such privilege was properly invoked. If that is the case, the question or questions to which objections were raised do not have to be answered, unless the U.S. Attorney’s Office grants immunity to that witness.

Once the Grand Jury receives the prosecutor’s evidence, the group deliberates in private. The presence of prosecutors, court reporters, or interpreters during the deliberations invalidates a Grand Jury indictment. During deliberations, all members of the Grand Jury discuss the evidence and if twelve of them agree that there is probable cause that a crime has been committed, and who committed it, a federal Magistrate or Judge receives the indictment directly from the Grand Jury in order to have it filed.

Finally, remember that all these interesting matters may be the object of private research by any of you. When you have time, visit our web page at www.uscourts.gov and specifically the one for Puerto Rico at www.prd.uscourts.gov. You will find a lot of interesting information there that by learning and mastering it we can all become better citizens. Thank you very much.

*Translated into English by Janis Palma, USCCI, Official Staff Interpreter
United States District Court for the District of Puerto Rico*